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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6 Attorneys for Plaintiff and the Putative Class
(Additional Attorneys Listed on Signature Page)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

10 TRONG NGUYEN, on behalf of himself and
all others similarly situated,

Case No. 07 0086
CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

W.)

14 SAMSUNG ELECTRONICS CO., LTD.;
SAMSUNG SEMICONDUCTOR, INC.;
HYNIX SEMICONDUCTOR, INC.; HYNIX
15 SEMICONDUCTOR AMERICA, INC.;
MICRON TECHNOLOGY, INC.; MICRON
16 SEMICONDUCTOR PRODUCTS, INC.;
LEXAR MEDIA, INC.; RENESAS
17 TECHNOLOGY CORPORATION;
RENESAS TECHNOLOGY AMERICA,
18 INC.; TOSHIBA CORPORATION;
TOSHIBA AMERICA CORPORATION;
19 TOSHIBA AMERICA ELECTRONIC
COMPONENTS, INC.; HITACHI, LTD.;
20 HITACHI AMERICA, LTD.; HITACHI
ELECTRONIC DEVICES (USA), INC.;
21 MITSUBISHI ELECTRIC CORP.;
MITSUBISHI ELECTRIC AND
22 ELECTRONICS U.S.A., INC.; MOSEL
VITELIC CORPORATION; MOSEL
23 VITELIC CORPORATION (USA);
WINDBOND ELECTRONICS
24 CORPORATION; and WINDBOND
ELECTRONICS CORPORATION
25 AMERICA, INC.;

Defendants.

1 Plaintiff, by his attorneys, brings this civil action for damages and injunctive
 2 relief on behalf of himself and all others similarly situated against the above-named Defendants,
 3 and demanding a trial by jury, complains and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This complaint is filed under Section 16 of the Clayton Act, 15 U.S.C.
 6 §26, to obtain injunctive relief for violations of Section 1 of the Sherman Act, 15 U.S.C. §1, to
 7 recover damages under state antitrust and consumer protection laws, and to recover the costs of
 8 suit, including reasonable attorneys' fees, for the injuries that Plaintiff and all others similarly
 9 situated sustained as a result of the Defendants' violations of those laws.

10 2. The Court has jurisdiction over the federal claim under 28 U.S.C.
 11 §§1331 and 1337. The Court has jurisdiction over the state law claims under 28 U.S.C. §1367
 12 because those claims are so related to the federal claim that they form part of the same case or
 13 controversy. The Court also has jurisdiction over the state law claims under 28 U.S.C. §1332
 14 because the amount in controversy for the Class exceeds \$5,000,000, and there are members of
 15 the Class who are citizens of a different state than the defendants.

16 3. Venue is proper in this District under 15 U.S.C. §22 and 28 U.S.C.
 17 §1391 because defendants reside, transact business, or are found within this District, and a
 18 substantial part of the events giving rise to the claims arose in this District.

19 4. The activities of the Defendants and their co-conspirators, as described
 20 herein, were within the flow of, were intended to, and did have a substantial effect on the
 21 foreign and interstate commerce of the United States.

22 **DEFINITIONS**

23 5. As used herein, the term Flash Memory ("Flash Memory") means
 24 NAND Flash Memory sold during the class period.

25 6. As used herein, the term "Class Period" means the time period
 26 January 1, 1999 through the present.

THE PARTIES

A. The Plaintiff

7. Plaintiff Trong Nguyen, a former California resident, indirectly purchased Flash Memory from one or more of the Defendants during the Class Period, for end use and not for resale, and was injured as a result of Defendants' illegal conduct.

B. The Defendants

8. Defendant Samsung Electronics Co. Ltd. is a business entity organized under the laws of South Korea, with its principal place of business at Samsung Main Building 250-2 ga, Taepyung-ro Chung-gu, Seoul, Korea. During the time period covered by this Complaint, Defendant Samsung Electronics Co. Ltd. manufactured, sold and distributed Flash Memory to customers throughout the United States.

9. Defendant Samsung Semiconductor, Inc. is a wholly owned and controlled subsidiary of defendant Samsung Electronics Co. Ltd. with its principal place of business at 3655 North First Street, San Jose, California 95134. During the time period covered by this Complaint, Defendant Samsung Semiconductor, Inc. sold and distributed Flash Memory to customers throughout the United States. Samsung Electronics Co. Ltd., and Samsung Semiconductor, Inc. are referred to collectively herein as "Samsung".

10. Defendant Hynix Semiconductor, Inc. is a business entity organized under the laws of South Korea, with its principal place of business at SAN 136-1, Ami-Ri Bubal-eub, Ichon-si, Kyongki-do, Korea. During the time period covered by this Complaint, Defendant Hynix Semiconductor, Inc. manufactured, sold and distributed Flash Memory to customers throughout the United States.

11. Defendant Hynix Semiconductor America, Inc. is a wholly owned and controlled subsidiary of defendant Hynix Semiconductor, Inc. with its principal place of business at 3101 North First Street, San Jose, California 95134. During the time period covered by this Complaint, Defendant Hynix Semiconductor America, Inc. sold and distributed Flash Memory to customers throughout the United States. Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc. are referred to collectively herein as "Hynix".

1 12. Defendant Micron Technology, Inc. is a Delaware Corporation with its
2 principal place of business at 8000 South Federal Way, Boise, Idaho. During the time period
3 covered by this Complaint, Defendant Micron Technology, Inc. manufactured, sold and
4 distributed Flash Memory throughout the United States.

5 13. Defendant Micron Semiconductor Products, Inc. is a wholly owned and
6 controlled subsidiary of defendant Micron Technology, Inc. with its principal place of business
7 at 8000 South Federal Way, Boise, Idaho 83716. During the time period covered by this
8 Complaint, Defendant Micron Semiconductor Products, Inc. sold and distributed Flash Memory
9 to customers throughout the United States.

10 14. Lexar Media, Inc. was acquired by Micron Technology, Inc. in or about
11 June 2006. Lexar Media, Inc. has its principal place of business at 47300 Bayside Parkway,
12 Fremont, California 94538. During the time period covered by this Complaint, Defendant
13 Lexar Media, Inc. sold and distributed Flash Memory to customers throughout the United
14 States. Lexar Media, Inc., Micron Technology, Inc., and Micron Semiconductor Products,
15 Inc. are referred to collectively herein as "Micron".

16 15. Defendant Renesas Technology Corporation is a business entity organized
17 under the laws of Japan with its principal place of business at Marunouchi Building, 4-1,
18 Marunouchi 2-chome, Chiyoda-ku Tokyo 100-6334, Japan. Renesas Technology Corporation
19 was established on or about April 1, 2003 as a joint venture of Hitachi and Mitsubishi. During
20 the time period covered by this Complaint, Defendant Resesas Technology Corporation sold
21 and distributed Flash Memory to customers throughout the United States.

22 16. Defendant Renesas Technology America, Inc. is a wholly owned and
23 controlled subsidiary of Renesas Technology Corporation with its principal place of business at
24 450 Holger Way, San Jose, California, 95134-1368. During the time period covered by this
25 Complaint, Defendant Renesas Technology America, Inc. sold and distributed Flash Memory to
26 customers throughout the United States. Defendants Renesas Technology Corporation and
27 Renesas Technology America, Inc. are referred to collectively herein as "Renesas".

1 17. Defendant Toshiba America Corporation is a wholly owned and
2 controlled subsidiary of Toshiba Corporation with its principal place of business at 1251
3 Avenue of the Americas, Suite 4110, New York, New York, 10020. During the time period
4 covered by this Complaint, Defendant Toshiba America Corporation manufactured, sold and
5 distributed Flash Memory to customers throughout the United States.

6 18. Defendant Toshiba America Electronic Components, Inc. is a wholly
7 owned and controlled subsidiary of Toshiba Corporation with its principal place of business
8 located at 19900 MacArthur Boulevard Suite 400, Irvine, California 92612. During the time
9 period covered by this Complaint, Defendant Toshiba America Electronic Components, Inc. sold and
10 distributed Flash Memory to customers throughout the United States. Toshiba Corporation,
11 Toshiba America Corporation, and Toshiba America Electronic Components, Inc. are referred
12 to collectively herein as "Toshiba".

13 19. Defendant Hitachi Ltd. is a business entity organized under the laws of
14 Japan, with its principal place of business at 6-1 Marunouchi Center Building 13F Chiyoda-
15 ku, Tokyo, 100-8220, Japan. During the Class Period, Hitachi Ltd. sold and distributed Flash
16 Memory to customers throughout the United States.

17 20. Defendant Hitachi America Ltd. is a wholly owned and controlled
18 subsidiary of defendant Hitachi Ltd. Hitachi America Ltd. is a business entity organized under
19 the laws of New York, with its principal place of business at 50 Prospect Avenue, Tarrytown,
20 New York, 10591. During the Class Period, Hitachi America Ltd. sold and distributed Flash
21 Memory to customers throughout the United States.

22 21. Defendant Hitachi Electronic Devices (USA), Inc. is a wholly owned and
23 controlled subsidiary of Defendant Hitachi Ltd., and is a business entity with its principal place
24 of business located at 575 Mauldin Road, Greenville, South Carolina 29607. During the Class
25 Period, Hitachi Electronic Devices (USA), Inc. sold and distributed Flash Memory to
26 customers throughout the United States. Defendants Hitachi Ltd., Hitachi America Ltd. and
27 Hitachi Electronic Devices (USA), Inc. are referred to collectively herein as "Hitachi."

1 22. Defendant Mitsubishi Electric Corporation is a business entity organized
2 under the laws of Japan, with its principal place of business located at Tokyo Building 2-7-3,
3 Marunouchi, Chiyoda-ku, Tokyo 100-8310, Japan. During the time covered by this Complaint,
4 Defendant Mitsubishi Electric Corporation sold and distributed Flash Memory to customers
5 throughout the United States.

6 23. Defendant Mitsubishi Electric & Electronics USA, Inc. is a wholly
7 owned and controlled subsidiary of Mitsubishi Electric Corporation. Defendant Mitsubishi
8 Electric & Electronics USA, Inc. is a business entity organized under the laws of Delaware,
9 with its principal place of business located at 500 Corporate Woods Parkway, Vernon Hills,
10 Illinois 60061. During the time covered by this Complaint, Defendant Mitsubishi Electric &
11 Electronics USA, Inc. sold and distributed Flash Memory to customers throughout the United
12 States. Mitsubishi Electric Corporation and Mitsubishi Electric & Electronics USA, Inc. are
13 referred to collectively herein as "Mitsubishi".

14 24. Defendant Mosel-Vitelic Corporation maintains its headquarters at No. 19
15 Li Hsin Road, Hsinchu Science Based Industrial Park, Hsinchu, Taiwan. During the time
16 covered by this Complaint, Defendant Mosel-Vitelic Corporation sold and distributed Flash
17 Memory to customers throughout the United States.

18 25. Defendant Mosel-Vitelic Corporation (USA) is a wholly owned and
19 controlled subsidiary of Mosel-Vitelic Corporation. Defendant Mosel-Vitelic Corporation
20 (USA) is a California corporation, with its principal place of business located at 3910 North
21 First Street, San Jose, California 95134. During the time covered by this Complaint,
22 Defendant Mosel-Vitelic Corporation (USA) sold and distributed Flash Memory to customers
23 throughout the United States. Mosel-Vitelic Corporation and Mosel-Vitelic Corporation (USA)
24 are referred to collectively herein as "Mosel-Vitelic".

25 26. Defendant Winbond Electronics Corporation maintains its headquarters at
26 4, Creation Road, 111, Science Based Industrial Park, Hsinchu, Taiwan. During the time
27 covered by this Complaint, Defendant Winbond Electronics Corporation sold and distributed
28 Flash Memory to customers throughout the United States.

1 27. Defendant Winbond Electronics Corporation America is a wholly owned
 2 and controlled subsidiary of Winbond Electronics Corporation. During the time covered by
 3 this Complaint, Defendant Winbond Electronics Corporation America sold and distributed
 4 Flash Memory to customers throughout the United States. Winbond Electronics Corporation
 5 and Winbond Electronics Corporation America are referred to collectively herein as
 6 "Winbond".

7 **C. Co-Conspirators**

8 28. Various others, presently unknown to Plaintiff, participated as co-
 9 conspirators with the Defendants in the violations of law alleged in this Complaint and have
 10 engaged in conduct and made statements in furtherance thereof.

11 29. The acts charged in this Complaint have been done by Defendants and
 12 their co-conspirators, or were authorized, ordered or done by their respective officers, agents,
 13 employees or representatives while actively engaged in the management of each Defendant's
 14 business or affairs.

15 30. Each of the Defendants named herein acted as the agent or joint venturer
 16 of or for the other Defendants with respect to the acts, violations and common course of
 17 conduct alleged herein. Each Defendant which is a subsidiary of a foreign parent acts as the
 18 sole United States agent for Flash Memory made by its parent company.

19 **CLASS ACTION ALLEGATIONS**

20 31. Plaintiff brings this suit as a class action pursuant Rules 23(b)(2) and
 21 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and a Plaintiff Class
 22 ("the Class") composed of and defined as follows:

23 All persons and entities residing in the United States who, from
 24 January 1, 1999 through the present, purchased Flash Memory in the
 25 United States indirectly from the Defendants for their own use and not for
 26 resale. Specifically excluded from this Class are the Defendants; the
 27 officers, directors or employees of any Defendant; any entity in which
 28 any Defendant has a controlling interest; and any affiliate, legal
 representative, heir or assign of any Defendant. Also excluded are any
 federal, state or local governmental entities, any judicial officer presiding
 over this action and the members of his/her immediate family and judicial
 staff, and any juror assigned to this action.

1 32. This action has been brought and may be properly maintained as a class
2 action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:
3 a. The Class is ascertainable and there is a well-defined community of
4 interest among the members of the Class;
5 b. Based upon the nature of the trade and commerce involved and the
6 number of indirect purchasers of Flash Memory, Plaintiff believes that
7 the members of the Class number in the thousands, and therefore is
8 sufficiently numerous that joinder of all Class members is not practicable;
9 c. Plaintiff's claims are typical of the claims of the members of the Class
10 because Plaintiff indirectly purchased Flash Memory from one or more of
11 the Defendants or their co-conspirators, and therefore Plaintiff's claims
12 arise from the same common course of conduct giving rise to the claims
13 of the members of the Class and the relief sought is common to the Class;
14 d. The following common questions of law or fact, among others, exist as to
15 the members of the Class:
16 i. whether Defendants formed and operated a combination or
17 conspiracy to fix, raise, maintain or stabilize the prices of, or
18 allocate the market for, Flash Memory;
19 ii. whether the combination or conspiracy caused Flash Memory
20 prices to be higher than they would have been in the absence of
21 Defendants' conduct;
22 iii. the operative time period of Defendants' combination or
23 conspiracy;
24 iv. whether Defendants' conduct caused injury to the business or
25 property of Plaintiff and the members of the Class;
26 v. the appropriate measure of the amount of damages suffered by the
27 Class;
28

- vi. whether Defendants' conduct violates Section 1 of the Sherman Act;
 - vii. whether Defendants' conduct violates Sections 16720 and 17200 of the California Business and Professions Code;
 - viii. whether Defendants' conduct violates the antitrust, unfair competition, and consumer protection laws of the other states as alleged below; and
 - ix. the appropriate nature of class-wide equitable relief.

e. These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class;

f. After determination of the predominate common issues identified above, if necessary or appropriate, the Class can be divided into logical and manageable subclasses;

g. Plaintiff will fairly and adequately protect the interests of the Class in that Plaintiff has no interests that are antagonistic to other members of the Class and has retained counsel competent and experienced in the prosecution of class actions and antitrust litigation to represent himself and the Class;

h. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual joinder of all damaged Class members is impractical. The damages suffered by individual Class members are relatively small, given the expense and burden of individual prosecution of the claims asserted in this litigation. Thus, absent the availability of class action procedures, it would not be feasible for Class members to redress the wrongs done to them. Even if the Class members could afford individual litigation, the court system could not. Further, individual litigation presents the potential for

1 inconsistent or contradictory judgments and would greatly magnify the
2 delay and expense to all parties and to the court system. Therefore, the
3 class action device presents far fewer case management difficulties and
4 will provide the benefits of unitary adjudication, economy of scale and
5 comprehensive supervision by a single court;

- 6 i. Defendants have acted, and refused to act, on grounds generally
7 applicable to the Class, thereby making appropriate final injunctive relief
8 with respect to the Class as a whole; and
9 j. In the absence of a class action, Defendants would be unjustly enriched
10 because they would be able to retain the benefits and fruits of their
11 wrongful conduct.

12 33. The Claims in this case are also properly certifiable under the laws of the
13 State of California, and of the other individual states identified below in the Fourth and Fifth
14 Claims for Relief.

15 **NATURE OF TRADE AND COMMERCE**

16 34. Flash Memory is a type of integrated circuit that can be electrically
17 erased and reprogrammed. Flash Memory is non-volatile meaning that it does not need
18 continuous power to maintain the information stored on the chip. Flash Memory is used in a
19 variety of applications, including memory cards, USB storage devices, digital audio devices,
20 mobile wireless technology, game consoles and personal computers. As used herein, the term
21 "Flash Memory" means NAND flash memory sold during the Class Period. For purposes of
22 this Complaint, Flash Memory excludes all types of static random access memory ("SRAM")
23 or dynamic random access memory ("DRAM") sold during the Class Period.

24 35. Flash Memory is distinct from SRAM and DRAM because it does not
25 need continuous power in order to store data. As a result, flash memory has a broader
26 application, particularly with respect to memory cards, storage devices and portable electronic
27 products.

1 36. Throughout the period of time covered by this Complaint, Defendants
 2 and their co-conspirators engaged in the business of marketing and selling Flash Memory
 3 throughout the United States. During each year of the Class Period, total sales of Flash
 4 Memory were in the billions of dollars.

5 37. The market for the manufacture and sale of Flash Memory is conducive
 6 to the type of collusive activity alleged here. That market is oligopolistic in nature. Samsung
 7 is the clear market leader. According to the 2006 "Memory Market Backgrounder" available at
 8 its website, the shares of the leading Flash Memory manufacturers in 2005 were as follows:

9	Samsung	52.9%
10	Toshiba	21.9%
11	Hynix	12.7%
	Renesas	6.8%
	Micron	2.2%

12 38. These five entities control over 96.5% of the Flash Memory market.

13 39. The market for the manufacture and sale of Flash Memory is subject to
 14 high manufacturing and technological barriers to entry. Efficient fabrication plants are large
 15 and costly. Flash Memory is also subject to technological advances, so that firms within the
 16 industry must undertake significant research and development expenses.

17 40. Further, Flash Memory is a homogenous product sold by Defendants and
 18 purchased by Plaintiff and members of the class primarily on the basis of price.

19 41. Manufacturers of electronic products and devices, and resellers of Flash
 20 Memory modules purchase Flash Memory directly or indirectly from the Defendants. These
 21 electronic products and devices and Flash Memory modules are then sold, directly or
 22 indirectly, to consumers.

23 42. California is the largest market in the world for Flash Memory and is the
 24 world wide center of the high technology industry and other industries that depend upon Flash
 25 Memory. Statements concerning the prices and market conditions for Flash Memory were
 26 disseminated by Defendants from and into California on a regular and continuous basis.

27

28

DEFENDANTS' ILLEGAL CONDUCT

2 43. On information and belief, in October 2006, the Antitrust Division of the
3 United States Department of Justice (“DOJ”) sent out subpoenas to 23 companies in connection
4 with an investigation of cartel activity in the SRAM industry from approximately 1998 through
5 at least 2005. Those companies include: Samsung, Hynix, Micron, Renesas and Toshiba. A
6 DOJ spokesperson was quoted as saying: “[t]he U.S. Department of Justice's antitrust division
7 is conducting an investigation regarding anti-competitive practices against chief SRAM
8 manufacturers.” Several of these companies being investigated—Hynix and Samsung—have
9 already pled guilty to price-fixing in the DRAM industry and have paid substantial fines to the
10 DOJ for those unlawful activities (\$300 million for Samsung and \$185 million for Hynix).
11 Elpida Memory, Inc., a DRAM manufacturer created in part by Hitachi, one of the Defendants
12 here, was fined \$84 million. Micron, another major Flash Memory manufacturer, was the
13 amnesty applicant in the DRAM price-fixing investigation.

14 44. On March 20, 2006, Hynix warned investors that the prices of NAND
15 flash memory could fall as much as 50% for the year. The very next day, Samsung reassured
16 the market that prices would recover and stabilize. As of August 2006, prices reportedly
17 stabilized, in part, as a result of reduced stocks from manufacturers. "Apple to spur NAND
18 Flash Market, firm says," *Electronic News*, August 9, 2006.

19 45. One commentator noted the pervasiveness of cartel activity among the
20 Defendants and others within the overall semiconductor industry: “‘If the DOJ wanted to, it
21 could just go down every line in the semiconductor industry and find the same issue,’ said
22 Gartner Inc. analyst Richard Gordon. ‘That’s because there are a relatively few number of
23 suppliers in the chip industry and an open flow of communication between competitors and
24 customers, who may not define price fixing the same way the DOJ does,’ he said.”
25 (<http://www.computerworld.com/action/article.do?command=viewArticleBasic&taxonomyName=government&articleId=900556&taxonomyId=13&intsrc=kc_top>).

1 46. Third-party information sources, such as DRAMeXchange (found at
2 <<http://www.dramexchange.com>>), allow Defendants to contemporaneously track each
3 other's Flash Memory prices.

4 47. Collusive behavior within the highly concentrated Flash Memory market
5 is facilitated by membership of Defendants in the numerous trade organizations within the
6 industry. All of the Defendants are members of the Joint Electron Device Engineering Council
7 ("JEDEC") Solid State Technology Association, a standard-setting group for solid-state
8 technologies, such as Flash Memory. Hynix and Micron are among the founding members of
9 the Open NAND Flash Interface ("ONFI") group, whose purpose is to meet and discuss
10 standards and production of NAND Flash products. The ONFI group has also been in talks
11 with Samsung with the aim of having Samsung join as a member.

12 48. Defendants and their co-conspirators have engaged in a contract,
13 combination, trust or conspiracy, the effect of which was to raise the prices at which they sold
14 Flash Memory to artificially inflated levels.

15 49. Defendants, through their officers, directors and employees, effectuated
16 the aforesaid contract, combination, trust or conspiracy between themselves and their co-
17 conspirators by, among other things:

- 18 a. participating in meetings and conversations, including through various
19 trade associations and committees, to discuss the prices of Flash Memory
20 in the United States;
- 21 b. agreeing, during those meetings and conversations, to charge prices at
22 specified levels and otherwise to increase and maintain prices of Flash
23 Memory sold in the United States;
- 24 c. issuing price announcements and quotations in accordance with the
25 agreements reached; and
- 26 d. selling Flash Memory to various customers in the United States at non-
27 competitive prices.

1 50. Defendants' contract, combination, trust or conspiracy was centered in,
 2 carried out, effectuated and perfected mainly in the State of California. Therefore, all members
 3 of the Class, whether or not California residents, are entitled to recover under California law,
 4 as well as the laws of their own states.

5 51. While average Flash Memory prices began to decline somewhat at the
 6 end of 2001, the cartel created by Defendants operated to mitigate those declines so that prices
 7 were still at supracompetitive levels. Defendants' collusive activity still continues and has had
 8 the effect of keeping prices at supracompetitive levels.

ACTIVE CONCEALMENT

9 52. Throughout and beyond the conspiracy, Defendants and their co-
 10 conspirators affirmatively and actively concealed their unlawful conduct from Plaintiff.
 11 Defendants and their co-conspirators conducted their conspiracy in secret and kept it mostly
 12 within the confines of their higher-level executives. Defendants and their co-conspirators
 13 publicly provided pre-textual and false justifications regarding their price increases. Defendants
 14 and their co-conspirators conducted their conspiracy in secret, concealed the true nature of their
 15 unlawful conduct and acts in furtherance thereof, and actively concealed their activities through
 16 various other means and methods to avoid detection. Plaintiff did not discover, and could not
 17 have discovered through the exercise of reasonable diligence, that Defendants and their co-
 18 conspirators were violating the antitrust laws as alleged herein until shortly before this class
 19 action litigation was commenced.

20 53. As a result of the active concealment of the conspiracy by Defendants and
 21 their co-conspirators, any and all applicable statutes of limitations otherwise applicable to the
 22 allegations herein have been tolled.

VIOLATIONS ALLEGED

First Claim for Relief

(Violation of Section 1 of the Sherman Act)

23 54. Plaintiff incorporates and realleges, as though fully set forth herein, each
 24 and every allegation set forth in the preceding paragraphs of this Complaint.

1 55. Beginning at a time presently unknown to Plaintiff, but at least as early as
2 January 1, 1999 and continuing through the present, the exact dates being unknown to Plaintiff,
3 Defendants and their co-conspirators entered into a continuing agreement, understanding, and
4 conspiracy in restraint of trade to artificially raise, fix, maintain, and/or stabilize prices for
5 Flash Memory in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C.
6 §1.

7 56. In formulating and carrying out the alleged agreement, understanding,
8 and conspiracy, the Defendants and their co-conspirators did those things that they combined
9 and conspired to do, including but not limited to the acts, practices, and course of conduct set
10 forth above, and the following, among others:

- 11 a. To fix, raise, maintain and stabilize the price of Flash Memory;
- 12 b. To allocate markets for Flash Memory among themselves;
- 13 c. To submit rigged bids for the award and performance of certain Flash
14 Memory contracts; and
- 15 d. To allocate among themselves the production of Flash Memory.

16 57. The combination and conspiracy alleged herein has had the following
17 effects, among others:

- 18 a. Price competition in the sale of Flash Memory has been restrained,
19 suppressed, and/or eliminated in the United States;
- 20 b. Prices for Flash Memory sold by Defendants and their co-conspirators
21 have been fixed, raised, maintained and stabilized at artificially high,
22 non-competitive levels throughout the United States; and
- 23 c. Those who purchased Flash Memory directly or indirectly from
24 Defendants and their co-conspirators have been deprived of the benefits
25 of free and open competition.

26 58. Plaintiff has been injured and will continue to be injured in his business
27 and property by paying more for Flash Memory purchased indirectly from the Defendants and
28 their co-conspirators than they would have paid and will pay in the absence of the combination

1 and conspiracy, including paying more for personal computers and other products in which
2 Flash Memory is a component as a result of higher prices paid for Flash Memory by the
3 manufacturers of those products.

4 59. Plaintiff and the class are entitled to an injunction against Defendants,
5 preventing and restraining the violations alleged herein.

Second Claim for Relief

(Violation of the California Cartwright Act)

8 60. Plaintiff incorporates and realleges, as though fully set forth herein, each
9 and every allegation set forth in the preceding paragraphs of this Complaint.

10 61. Defendants' contract, combination, trust or conspiracy was centered in,
11 carried out, effectuated and perfected mainly within the State of California, and Defendant's
12 conduct within California injured all members of the Class throughout the United States.
13 Therefore, this claim for relief under California law is brought on behalf of all members of the
14 Class, whether or not they are California residents.

15 62. Beginning at a time presently unknown to Plaintiff, but at least as early as
16 January 1, 1999, and continuing thereafter at least up to and including the present, Defendants
17 and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of
18 the trade and commerce described above in violation of Section 16720, California Business and
19 Professional Code. Defendants, and each of them, have acted in violation of Section 16720 to
20 fix, raise, stabilize and maintain prices of, and allocate markets for, Flash Memory at supra-
21 competitive levels.

22 63. The aforesaid violations of Section 16720, California Business and
23 Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of
24 action among the Defendants and their co-conspirators, the substantial terms of which were to
25 fix, raise, maintain and stabilize the prices of, and to allocate markets for, Flash Memory.

26 64. For the purpose of forming and effectuating the unlawful trust, the
27 Defendants and their co-conspirators have done those things which they combined and

1 conspired to do, including but in no way limited to the acts, practices and course of conduct set
2 forth above and the following:

- 3 a. to fix, raise, maintain and stabilize the price of Flash Memory;
- 4 b. to allocate markets for Flash Memory amongst themselves;
- 5 c. to submit rigged bids for the award and performance of certain Flash
Memory contracts; and
- 6 d. to allocate amongst themselves the production of Flash Memory.

7 65. The combination and conspiracy alleged herein has had, inter alia, the
8 following effects:

- 9 a. price competition in the sale of Flash Memory has been restrained,
10 suppressed and/or eliminated in the State of California and throughout the
11 United States;
- 12 b. prices for Flash Memory sold by Defendants and their co-conspirators
13 have been fixed, raised, maintained and stabilized at artificially high,
14 non-competitive levels in the State of California and throughout the
15 United States; and
- 16 c. those who purchased Flash Memory from Defendants and their co-
17 conspirators have been deprived of the benefit of free and open
18 competition.

19 66. Plaintiff and the other members of the Class paid supra-competitive,
20 artificially inflated prices for Flash Memory.

21 67. As a direct and proximate result of Defendants' unlawful conduct,
22 Plaintiff and the members of the Class have been injured in their business and property in that
23 they paid more for Flash Memory than they otherwise would have paid in the absence of
24 Defendants' unlawful conduct. As a result of Defendants' violation of Section 16720 of the
25 California Business and Professions Code, Plaintiff seeks treble damages and the costs of suit,
26 including reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business
27 and Professions Code.

Third Claim for Relief

(Violation of the California Unfair Competition Law)

68. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

69. Defendants' business acts and practices were centered in, carried out, effectuated and perfected mainly within the State of California, and Defendant's conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

70. Beginning on a date unknown to Plaintiff, but at least as early as January 1, 1999, and continuing thereafter at least up through and including the present, Defendants committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above.

71. This Claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged herein, that violated Section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Law.

72. The Defendants' conduct as alleged herein violated Section 17200. The acts, omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged herein, constituted a common continuous and continuing course of conduct of unfair competition by means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the following:

- a. The violations of Section 1 of the Sherman Act, as set forth above;
 - b. The violations of Section 16720, et seq., of the California Business and Professions Code, set above:

- 1 c. Defendants' acts, omissions, misrepresentations, practices and non-
- 2 disclosures, as described above, whether or not in violation of Section
- 3 16720, et seq. of the California Business and Professions Code, and
- 4 whether or not concerted or independent acts, are otherwise unfair,
- 5 unconscionable, unlawful or fraudulent;
- 6 d. Defendants' act and practices are unfair to consumers of Flash Memory
- 7 in the State of California and throughout the United States, within the
- 8 meaning of Section 17200, California Business and Professions Code;
- 9 and
- 10 e. Defendants' acts and practices are fraudulent or deceptive within the
- 11 meaning of Section 17200 of the California Business and Professions
- 12 Code.

13 73. Plaintiff and each of the Class members are entitled to full restitution
14 and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may
15 have been obtained by Defendants as a result of such business acts or practices.

16 74. The illegal conduct alleged herein is continuing and there is no indication
17 that Defendants will not continue such activity into the future.

18 75. The unlawful and unfair business practices of Defendants, and each of
19 them, as described above, have caused and continue to cause Plaintiff and the members of the
20 Class to pay supra-competitive and artificially-inflated prices for Flash Memory. Plaintiff and
21 the members of the class suffered injury in fact and lost money or property as a result of such
22 unfair competition.

23 76. The conduct of Defendants as alleged in this Complaint violates Section
24 17200 of the California Business and Professions Code.

25 77. As alleged in this Complaint, Defendants and their co-conspirators have
26 been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair
27 competition. Plaintiff and the members of the Class are accordingly entitled to equitable relief
28 including restitution and/or disgorgement of all revenues, earnings, profits, compensation and

benefits which may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

Fourth Claim for Relief

(Violation of State Antitrust and Unfair Competition Laws)

78. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

79. By reason of the foregoing, defendants have entered into agreements in restraint of trade in violation of Alabama Code §§8-10-1 et seq.

9 80. By reason of the foregoing, defendants have entered into agreements in
10 restraint of trade in violation of Arizona Revised Stat. §§44-1401 et seq.

11 81. By reason of the foregoing, defendants have entered into agreements in
12 restraint of trade in violation of California Bus. & Prof. Code §§16700 et seq. and Cal. Bus. &
13 Prof. Code §§17200 et seq.

14 82. By reason of the foregoing, defendants have entered into agreements in
15 restraint of trade in violation of District of Columbia Code Ann. §§28-4503 et seq.

16 83. By reason of the foregoing, defendants have entered into agreements in
17 restraint of trade in violation of Iowa Code §§553.1 et seq.

18 84. By reason of the foregoing, defendants have entered into agreements in
19 restraint of trade in violation of Kansas Stat. Ann. §§50-101 et seq.

20 85. By reason of the foregoing, defendants have entered into agreements in
21 restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§1101 et seq.

22 86. By reason of the foregoing, defendants have entered into agreements in
23 restraint of trade in violation of Michigan Comp. Laws. Ann. §§445.773 et seq.

24 87. By reason of the foregoing, defendants have entered into agreements in
25 restraint of trade in violation of Minnesota Stat. §§325D.52 et seq.

26 88. By reason of the foregoing, defendants have entered into agreements in
27 restraint of trade in violation of Mississippi Code Ann. §75-21-1 et seq.

1 89. By reason of the foregoing, defendants have entered into agreements in
2 restraint of trade in violation of Nebraska Rev. Stat. §§59-801 et seq.

3 90. By reason of the foregoing, defendants have entered into agreements in
4 restraint of trade in violation of Nevada Rev. Stat. Ann. §§598A et seq.

5 91. By reason of the foregoing, defendants have entered into agreements in
6 restraint of trade in violation of New Mexico Stat. Ann. §§57-1-1 et seq.

7 92. By reason of the foregoing, defendants have entered into agreements in
8 restraint of trade in violation of North Carolina Gen. Stat. §§75-1 et seq.

9 93. By reason of the foregoing, defendants have entered into agreements in
10 restraint of trade in violation of North Dakota Cent. Code §§51-08.1-01 et seq.

11 94. By reason of the foregoing, defendants have entered into agreements in
12 restraint of trade in violation of the Pennsylvania common law.

13 95. By reason of the foregoing, defendants have entered into agreements in
14 restraint of trade in violation of South Dakota Codified Laws Ann. §§37-1 et seq.

15 96. By reason of the foregoing, defendants have entered into agreements in
16 restraint of trade in violation of Tennessee Code Ann. §§47-25-101 et seq.

17 97. By reason of the foregoing, defendants have entered into agreements in
18 restraint of trade in violation of Vermont Stat. Ann. 9 §§2453 et seq.

19 98. By reason of the foregoing, defendants have entered into agreements in
20 restraint of trade in violation of West Virginia §§47-18-1 et seq.

21 99. By reason of the foregoing, defendants have entered into agreements in
22 restraint of trade in violation of Wisconsin Stat. §§133.01 et seq.

23 100. Class Members in each of the states listed above paid supra-competitive,
24 artificially inflated prices for Flash Memory. As a direct and proximate result of Defendants'
25 unlawful conduct, such members of the Class have been injured in their business and property
26 in that they paid more for Flash Memory than they otherwise would have paid in the absence of
27 Defendants' unlawful conduct.

Fifth Claim For Relief

(Violation of State Consumer Protection and Unfair Competition Laws)

101. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

102. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

103. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. §§45.50.471 et seq.

104. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code §4-88-101 et seq.

105. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of California Bus. & Prof. Code §17200 et seq.

106. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of District of Columbia Code §28-3901 et seq.

107. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Florida Stat. §501.201 et seq.

108. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Hawaii Rev. Stat. §480 et seq.

109. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code §48-601 et seq.

110. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kansas Stat. §50-623 et seq.

111. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Louisiana Rev. Stat. §51:1401 et seq.

112. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Maine Rev. Stat. §207 et seq.

1 113. Defendants have engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of Montana Code §30-14-101 et seq.

3 114. Defendants have engaged in unfair competition or unfair or deceptive acts
4 or practices in violation of Nebraska Rev. Stat. §59-1601 et seq.

5 115. Defendants have engaged in unfair competition or unfair or deceptive acts
6 or practices in violation of New Mexico Stat. §57-12-1 et seq.

7 116. Defendants have engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of New York Gen. Bus. Law §349 et seq.

9 117. Defendants have engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of North Carolina Gen. Stat. §75-1.1 et seq.

11 118. Defendants have engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of Oregon Rev. Stat. §646.605 et seq.

13 119. Defendants have engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of Rhode Island Gen. Laws. §6-13.1-1 et seq.

15 120. Defendants have engaged in unfair competition or unfair or deceptive acts
16 or practices in violation of South Carolina Code Laws §39-5-10 et seq.

17 121. Defendants have engaged in unfair competition or unfair or deceptive acts
18 or practices in violation of Utah Code §13-11-1 et seq.

19 122. Defendants have engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of 9 Vermont §2451 et seq.

21 123. Defendants have engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of West Virginia Code §46A-6-101 et seq.

23 124. Defendants have engaged in unfair competition or unfair or deceptive acts
24 or practices in violation of Wyoming Stat. §40-12-105.

25 125. Class Members in the states listed above paid supra-competitive,
26 artificially inflated prices for Flash Memory. As a direct and proximate result of Defendants'
27 unlawful conduct, Plaintiff and the members of the Class have been injured in their business

1 and property in that they paid more for Flash Memory than they otherwise would have paid in
2 the absence of Defendants' unlawful conduct.

3 **Sixth Claim for Relief**

4 **(Unjust Enrichment and Disgorgement of Profits)**

5 126. Plaintiff incorporates and realleges, as though fully set forth herein, each
6 and every allegation set forth in the preceding paragraphs of this Complaint.

7 127. Defendants have been unjustly enriched through overpayments by
8 Plaintiff and Class members and the resulting profits.

9 128. Under common law principles of unjust enrichment, Defendants should
10 not be permitted to retain the benefits conferred via overpayments by Plaintiff and Class
11 members.

12 129. Plaintiff seeks disgorgement of all profits resulting from such
13 overpayments and establishment of a constructive trust from which Plaintiff and Class members
14 may seek restitution.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays:

17 A. That the Court determine that the Sherman Act, state antitrust law, and
18 state consumer protection and/or unfair competition law claims alleged herein may be
19 maintained as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
20 Procedure;

21 B. That the unlawful conduct, contract, conspiracy or combination alleged
22 herein be adjudged and decreed to be:

23 1. A restraint of trade or commerce in violation of Section 1 of the Sherman
24 Act, as alleged in the First Claim for Relief;

25 2. An unlawful combination, trust, agreement, understanding, and/or
26 concert of action in violation of the state antitrust laws identified in the
27 Second and Fourth Claims for Relief herein;

- 1 3. Violations of the state consumer protection and unfair competition laws
- 2 identified in the Third and Fifth Claims for Relief herein; and
- 3 4. Acts of unjust enrichment as set forth in the Sixth Claim for Relief
- 4 herein.

5 C. That Plaintiff and the Class recover damages, as provided by federal and
6 state antitrust laws, and that a joint and several judgment in favor of Plaintiff and the Class be
7 entered against the Defendants in an amount to be trebled in accordance with such laws;

8 D. That Defendants, their affiliates, successors, transferees, assignees, and
9 the officers, directors, partners, agents, and employees thereof, and all other persons acting or
10 claiming to act on their behalf, be permanently enjoined and restrained from in any manner:
11 (1) continuing, maintaining, or renewing the conduct, contract, conspiracy or combination
12 alleged herein, or from entering into any other conspiracy alleged herein, or from entering into
13 any other contract, conspiracy or combination having a similar purpose or effect, and from
14 adopting or following any practice, plan, program, or device having a similar purpose or effect;
15 and (2) communicating or causing to be communicated to any other person engaged in the sale
16 of Flash Memory, information concerning bids of competitors;

17 E. That Plaintiff be awarded restitution, including disgorgement of profits
18 obtained by Defendants as a result of their acts of unfair competition and acts of unjust
19 enrichment;

20 F. That Plaintiff and members of the Class be awarded pre- and post-
21 judgment interest, and that that interest be awarded at the highest legal rate from and after the
22 date of service of the initial complaint in this action;

23 G. That Plaintiff and members of the Class recover their costs of this suit,
24 including reasonable attorneys' fees as provided by law; and

25 H. That Plaintiff and members of the Class have such other, further, and
26 different relief as the case may require and the Court may deem just and proper under the
27 circumstances.

1
2 Dated: January 5, 2007

Respectfully submitted,

3
4 By:

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Counsel for Plaintiff and the Putative Class

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury for all issues so triable.

Dated: January 5, 2007

Respectfully submitted,

By:

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